



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

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DECISION OF THE BOARD

Mailed and Filed: OCTOBER 18, 2022

IN THE MATTER OF:

Appeal Board No. 623770

PRESENT: JUNE F. O'NEILL, MEMBER

The Department of Labor issued the initial determination holding the claimant eligible to receive benefits, effective August 16, 2021. The employer requested a hearing and objected contending that the claimant should be disqualified from receiving benefits on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by the employer cannot be used toward the establishment of a claim for benefits.

The Administrative Law Judge held telephone conference hearings at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by and on behalf of the claimant and on behalf of the employer. By decision filed May 27, 2022 (A.L.J. Case No.), the Administrative Law Judge sustained, effective October 28, 2021, the employer's objection and overruled the initial determination.

The claimant appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the written statement submitted on behalf of the claimant.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant worked for the employer's school district as a full-time keyboard specialist. The claimant's position was governed by a union contract; the last contract governing the claimant's position ran from July 1, 2019-June 30, 2024. In her position, the claimant was entitled to an annual salary of \$28,199 paid at the biweekly rate of \$1,084.58, paid leave

time including sick, personal, vacation and holiday leave, as well as health insurance coverage. The amount of her paid leave time accruals renewed with each new school year beginning on July 1 of the year. Although the claimant was out for a few months in the beginning of the 2020-2021 school year, the claimant returned to her contractual position on January 11, 2021 for the 2020-2021 school year.

By the middle of May 2021, the claimant had used up all her leave time for the school year. As a result, on May 20, 2021, the claimant was shifted to voucher pay status for the remainder of the school year. When in voucher pay status, an employee is paid only for the time worked; is not entitled to paid leave time; and is not covered by health insurance.

By letter dated June 1, 2021, the employer advised the claimant of their intention to continue her employment as a keyboard specialist for the 2021-2022 school year beginning on July 1, 2021 and ending on June 30, 2022; the letter asked that she advise the employer of her intent to return to her position by signing and returning the letter. Before signing the letter, the claimant wanted to confirm that she would be, once again, returned to her contractual position with benefits for the 2021-2022 school year. She was advised by a payroll representative and by the assistant director of finance that she would be.

The return to her contractual position was confirmed in an email dated June 4, in which the employer informed the claimant that she would be reinstated to contract pay as of July 1 for the 2021-2022 school year. The email further advised the claimant that if her sick, personal and vacation time would be used up prior to the end of that school year, she would again be placed in voucher pay status. On June 7, she signed the letter indicating her intent to return to her contractual position.

Thereafter, by email dated June 16, the assistant director of finance advised the claimant that she would not be reinstated to her contract position and would instead remain in voucher pay status for the 2021-2022 school year. The claimant complained to the employer about this change. However, by paycheck dated July 2, 2021, the claimant received \$594.22; and by paycheck dated July 16, 2021, the claimant received \$457.38.

After receiving the first paychecks of the new school year which confirmed she had not been returned to her contractual position, the claimant decided to

resign. The claimant did not report to work after July 15, 2021, because she had been placed in voucher pay status for the new school year. The claimant was paid through August 13, 2021.

OPINION: The credible evidence establishes that the claimant did not report to work after July 15, 2021, because the employer failed to return her to her contractual position for the new school year. The parties agree that the claimant did not report to work after July 15. It was the claimant's failure to report to work which predated and then set in motion the process for the employer to formally remove her from her position that October for, among other things, the failure to report to work. As it was the claimant who initiated the separation by failing to return to work, the separation constitutes a voluntary separation for Unemployment Insurance purposes.

The claimant credibly testified that she resigned because the employer failed to return her to her contractual position for the new school year. Significantly, the contract period governing the claimant's position

had not expired and the claimant's contractual position included paid time off as well as health insurance coverage. By continuing the claimant in voucher pay status, the employer changed the terms and conditions of the claimant's employment. This change not only eliminated the claimant's paid time off benefits and her health insurance coverage but also led to a significant reduction in her salary. The claimant's testimony that her salary was significantly reduced when in voucher status was substantiated by the employer's paystubs which were entered into evidence.

We find that the employer's decision to continue the claimant in voucher pay status which resulted in a significant reduction in her salary, as well as the loss of paid leave time and health insurance coverage constitutes a substantial and unilateral change in the terms and conditions of the claimant's employment. It is well-settled that a substantial and unilateral change in the terms and conditions of one's employment, constitutes good cause to resign (see, *Matter of Knoblauch*, 239 AD2d 761 (3d Dept 1997); see also, Appeal Board No. 548800). Accordingly, the claimant's voluntary separation from employment was with good cause and she is, therefore, eligible for benefits.

DECISION: The decision of the Administrative Law Judge is reversed.

The employer's objection, that the claimant should be disqualified from receiving benefits because the claimant lost employment through misconduct in connection with that employment, is overruled.

The initial determination, holding the claimant eligible to receive benefits, effective August 16, 2021, is sustained.

The claimant is allowed benefits with respect to the issues decided herein.

JUNE F. O'NEILL, MEMBER